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HOUSE BILL 2554

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State of Washington

54th Legislature

1996 Regular Session

By Representatives Cole, Poulsen, Chopp, Dickerson, Murray, Sheldon, Tokuda, Patterson, Conway, Regala, Linville and Costa

Read first time 01/12/96. Referred to Committee on Education.

1 AN ACT Relating to record checks of educational employees and  
2 applicants; amending RCW 28A.400.303, 43.43.845, and 43.43.830; adding  
3 new sections to chapter 28A.400 RCW; making appropriations; and  
4 declaring an emergency.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 NEW SECTION. **Sec. 1.** A new section is added to chapter 28A.400  
7 RCW to read as follows:

8 (1) In accordance with the time line established under subsection  
9 (3) of this section, school districts shall require that all employees  
10 who have not had a record check under RCW 28A.400.303 apply for a  
11 record check through the Washington state patrol criminal  
12 identification system under RCW 43.43.830 through 43.43.838, 10.97.030,  
13 and 10.97.050 and through the federal bureau of investigation.  
14 Employees of school district contractors and educational service  
15 districts who have regularly scheduled unsupervised access to children  
16 in public schools who have not had a record check under RCW 28A.400.303  
17 also shall have the record check. The record check shall include a  
18 fingerprint check using a complete Washington state criminal  
19 identification fingerprint card. The superintendent of public

1 instruction shall provide a copy of the record report to the employee.  
2 Once an employee has a record check as required under this section,  
3 additional record checks shall not be required of the employee unless  
4 required by other provisions of law.

5 (2) Employees, school districts, and educational service districts  
6 shall not be required by the state patrol or superintendent of public  
7 instruction to pay for the record check required in subsection (1) of  
8 this section.

9 (3) Notwithstanding other provisions of law, the state patrol and  
10 superintendent of public instruction shall complete the record checks  
11 required in this section no later than July 31, 1999. The state patrol  
12 and the superintendent of public instruction shall establish a time  
13 line for the submission of fingerprint identification cards and for  
14 completion of the record checks, and shall notify the legislature,  
15 school districts, and educational service districts of the time line.  
16 The time line shall ensure that all of the record checks required by  
17 this section are completed by July 31, 1999.

18 (4) When a record check required under this section indicates that  
19 a classified employee has been convicted of a crime, the employer shall  
20 consider the following when making employment decisions pertaining to  
21 the individual: The age and maturity of the individual at the time the  
22 crime was committed; the seriousness of the crime and any mitigating  
23 factors; the likelihood that the crime will be repeated; the proximity  
24 in time of the crime; evidence that would support good moral character  
25 and personal fitness; and other appropriate factors. A classified  
26 employee dismissed or otherwise adversely affected as a result of a  
27 conviction identified in the record check may appeal pursuant to RCW  
28 28A.400.320 or 28A.400.340, whichever is applicable.

29 (5) A certificated employee dismissed or otherwise adversely  
30 affected as a result of a conviction identified in the record check may  
31 appeal pursuant to RCW 28A.400.340 or chapter 28A.405 RCW, whichever is  
32 applicable.

33 **Sec. 2.** RCW 28A.400.303 and 1992 c 159 s 2 are each amended to  
34 read as follows:

35 School districts(~~(, educational service districts, and their~~  
36 ~~contractors))~~ hiring employees (~~(who will have regularly scheduled~~  
37 ~~unsupervised access to children))~~ shall require a record check through  
38 the Washington state patrol criminal identification system under RCW

1 43.43.830 through (~~43.43.834~~) 43.43.838, 10.97.030, and 10.97.050 and  
2 through the federal bureau of investigation before hiring an employee.  
3 School district contractors and educational service districts hiring  
4 employees who will have regularly scheduled unsupervised access to  
5 children also shall require the record check. The record check shall  
6 include a fingerprint check using a complete Washington state criminal  
7 identification fingerprint card. The (~~requesting—entity~~)  
8 superintendent of public instruction shall provide a copy of the record  
9 report to the applicant. When necessary, applicants may be employed on  
10 a conditional basis pending completion of the (~~investigation~~) record  
11 check. If the applicant has had a record check within the previous two  
12 years, the district or contractor may waive the requirement. The  
13 district, pursuant to chapter 41.59 or 41.56 RCW, or contractor hiring  
14 the employee shall determine who shall pay costs associated with the  
15 record check.

16 NEW SECTION. Sec. 3. A new section is added to chapter 28A.400  
17 RCW to read as follows:

18 The superintendent of public instruction shall adopt rules  
19 regarding the access to record check files. The rules shall include  
20 provisions for written processes and procedures delineating an  
21 employee's or applicant's access to and review of state agency files  
22 regarding record check information. The rules shall also provide  
23 written processes and procedures that ensure that access to the  
24 superintendent of public instruction record check data base shall  
25 remain with only those individuals processing record check information  
26 at the office of the superintendent of public instruction, school  
27 districts, and educational service districts.

28 NEW SECTION. Sec. 4. A new section is added to chapter 28A.400  
29 RCW to read as follows:

30 Any employee of a school district or educational service district  
31 who is arrested for a felony crime shall notify the superintendent of  
32 his or her district of the arrest within fourteen calendar days of the  
33 arrest. Failure of the employee to notify his or her superintendent in  
34 accordance with this section may be grounds for immediate dismissal.  
35 It is the duty of the superintendent of the school district or  
36 educational service district to provide this information to the

1 superintendent of public instruction within fourteen calendar days of  
2 receiving the information.

3 **Sec. 5.** RCW 43.43.845 and 1990 c 33 s 577 are each amended to read  
4 as follows:

5 ~~((1))~~ Upon a guilty plea or conviction of a person of any  
6 ~~((felony crime involving the physical neglect of a child under chapter~~  
7 ~~9A.42 RCW, the physical injury or death of a child under chapter 9A.32~~  
8 ~~or 9A.36 RCW (except motor vehicle violations under chapter 46.61 RCW),~~  
9 ~~sexual exploitation of a child under chapter 9.68A RCW, sexual offenses~~  
10 ~~under chapter 9A.44 RCW where a minor is the victim, promoting~~  
11 ~~prostitution of a minor under chapter 9A.88 RCW, or the sale or~~  
12 ~~purchase of a minor child under RCW 9A.64.030))~~ crime against children  
13 or other persons as defined in RCW 43.43.830(5), the prosecuting  
14 attorney shall determine whether the person holds a certificate or  
15 permit issued under chapter~~((s 28A.405 and))~~ 28A.410 RCW or is employed  
16 by a school district or educational service district. If the person is  
17 employed by a school district or educational service district or holds  
18 a certificate or permit issued under chapter~~((s 28A.405 and))~~ 28A.410  
19 RCW, the prosecuting attorney shall notify ~~((the state patrol of such~~  
20 ~~guilty pleas or convictions.~~

21 ~~(2) When the state patrol receives information that a person who~~  
22 ~~has a certificate or permit issued under chapters 28A.405 and 28A.410~~  
23 ~~RCW or is employed by a school district has pled guilty to or been~~  
24 ~~convicted of one of the felony crimes under subsection (1) of this~~  
25 ~~section, the state patrol shall immediately transmit that information~~  
26 ~~to))~~ the superintendent of public instruction. It shall be the duty of  
27 the superintendent of public instruction to provide this information to  
28 ~~((the state board of education and))~~ the school district or educational  
29 service district employing the individual who pled guilty or was  
30 convicted of ~~((the crimes identified in subsection (1) of this~~  
31 ~~section))~~ a crime against children or other persons.

32 **Sec. 6.** RCW 43.43.830 and 1995 c 250 s 1 are each amended to read  
33 as follows:

34 Unless the context clearly requires otherwise, the definitions in  
35 this section apply throughout RCW 43.43.830 through 43.43.840.

36 (1) "Applicant" means:

1 (a) Any prospective employee who will or may have unsupervised  
2 access to children under sixteen years of age or developmentally  
3 disabled persons or vulnerable adults during the course of his or her  
4 employment or involvement with the business or organization;

5 (b) Any prospective volunteer who will have regularly scheduled  
6 unsupervised access to children under sixteen years of age,  
7 developmentally disabled persons, or vulnerable adults during the  
8 course of his or her employment or involvement with the business or  
9 organization under circumstances where such access will or may involve  
10 groups of (i) five or fewer children under twelve years of age, (ii)  
11 three or fewer children between twelve and sixteen years of age, (iii)  
12 developmentally disabled persons, or (iv) vulnerable adults; (~~(e)~~)

13 (c) Any prospective adoptive parent, as defined in RCW 26.33.020;  
14 or

15 (d) Any school district employee.

16 (2) "Business or organization" means a business or organization  
17 licensed in this state, any agency of the state, or other governmental  
18 entity, that educates, trains, treats, supervises, houses, or provides  
19 recreation to developmentally disabled persons, vulnerable adults, or  
20 children under sixteen years of age, including but not limited to  
21 public housing authorities, school districts, and educational service  
22 districts.

23 (3) "Civil adjudication" means a specific court finding of sexual  
24 abuse or exploitation or physical abuse in a dependency action under  
25 RCW 13.34.040 or in a domestic relations action under Title 26 RCW. In  
26 the case of vulnerable adults, civil adjudication means a specific  
27 court finding of abuse or financial exploitation in a protection  
28 proceeding under chapter 74.34 RCW. It does not include administrative  
29 proceedings. The term "civil adjudication" is further limited to court  
30 findings that identify as the perpetrator of the abuse a named  
31 individual, over the age of eighteen years, who was a party to the  
32 dependency or dissolution proceeding or was a respondent in a  
33 protection proceeding in which the finding was made and who contested  
34 the allegation of abuse or exploitation.

35 (4) "Conviction record" means "conviction record" information as  
36 defined in RCW 10.97.030(3) relating to a crime against children or  
37 other persons committed by either an adult or a juvenile. It does not  
38 include a conviction for an offense that has been the subject of an  
39 expungement, pardon, annulment, certificate of rehabilitation, or other

1 equivalent procedure based on a finding of the rehabilitation of the  
2 person convicted, or a conviction that has been the subject of a  
3 pardon, annulment, or other equivalent procedure based on a finding of  
4 innocence. It does include convictions for offenses for which the  
5 defendant received a deferred or suspended sentence, unless the record  
6 has been expunged according to law.

7 (5) "Crime against children or other persons" means a conviction of  
8 any of the following offenses: Aggravated murder; first or second  
9 degree murder; first or second degree kidnaping; first, second, or  
10 third degree assault; first, second, or third degree assault of a  
11 child; first, second, or third degree rape; first, second, or third  
12 degree rape of a child; first or second degree robbery; first degree  
13 arson; first degree burglary; first or second degree manslaughter;  
14 first or second degree extortion; indecent liberties; incest; vehicular  
15 homicide; first degree promoting prostitution; communication with a  
16 minor; unlawful imprisonment; simple assault; sexual exploitation of  
17 minors; first or second degree criminal mistreatment; child abuse or  
18 neglect as defined in RCW 26.44.020; first or second degree custodial  
19 interference; malicious harassment; first, second, or third degree  
20 child molestation; first or second degree sexual misconduct with a  
21 minor; first or second degree rape of a child; patronizing a juvenile  
22 prostitute; child abandonment; promoting pornography; selling or  
23 distributing erotic material to a minor; custodial assault; violation  
24 of child abuse restraining order; child buying or selling;  
25 prostitution; felony indecent exposure; criminal abandonment; or any of  
26 these crimes as they may be renamed in the future.

27 (6) "Crimes relating to financial exploitation" means a conviction  
28 for first, second, or third degree extortion; first, second, or third  
29 degree theft; first or second degree robbery; forgery; or any of these  
30 crimes as they may be renamed in the future.

31 (7) "Disciplinary board final decision" means any final decision  
32 issued by a disciplining authority under chapter 18.130 RCW or the  
33 secretary of the department of health for the following businesses or  
34 professions:

- 35 (a) Chiropractic;
- 36 (b) Dentistry;
- 37 (c) Dental hygiene;
- 38 (d) Massage;
- 39 (e) Midwifery;

- 1 (f) Naturopathy;
- 2 (g) Osteopathy;
- 3 (h) Physical therapy;
- 4 (i) Physicians;
- 5 (j) Practical nursing;
- 6 (k) Registered nursing; and
- 7 (l) Psychology.

8 "Disciplinary board final decision," for real estate brokers and  
9 salespersons, means any final decision issued by the director of the  
10 department of licensing for real estate brokers and salespersons.

11 (8) "Unsupervised" means not in the presence of:

12 (a) Another employee or volunteer from the same business or  
13 organization as the applicant; or

14 (b) Any relative or guardian of any of the children or  
15 developmentally disabled persons or vulnerable adults to which the  
16 applicant has access during the course of his or her employment or  
17 involvement with the business or organization.

18 (9) "Vulnerable adult" means "vulnerable adult" as defined in  
19 chapter 74.34 RCW, except that for the purposes of requesting and  
20 receiving background checks pursuant to RCW 43.43.832, it shall also  
21 include adults of any age who lack the functional, mental, or physical  
22 ability to care for themselves.

23 (10) "Financial exploitation" means the illegal or improper use of  
24 a vulnerable adult or that adult's resources for another person's  
25 profit or advantage.

26 (11) "Agency" means any person, firm, partnership, association,  
27 corporation, or facility which receives, provides services to, houses  
28 or otherwise cares for vulnerable adults.

29 NEW SECTION. **Sec. 7.** The sum of three hundred thousand dollars,  
30 or as much thereof as may be necessary, is appropriated for the  
31 biennium ending June 30, 1997, from the general fund to the  
32 superintendent of public instruction for the purposes of section 1 of  
33 this act.

34 NEW SECTION. **Sec. 8.** The sum of one million seven hundred seventy  
35 thousand dollars, or as much thereof as may be necessary, is  
36 appropriated for the biennium ending June 30, 1997, from the general  
37 fund to the state patrol for the purposes of section 1 of this act.

1        NEW SECTION.    **Sec. 9.**    This act is necessary for the immediate  
2 preservation of the public peace, health, or safety, or support of the  
3 state government and its existing public institutions, and shall take  
4 effect immediately.

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